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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/657,981	09/09/2003	Barbara A. King	KIN-001271C1	1296

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EXAMINER

GREEN, BRIAN

ART UNIT PAPER NUMBER

3611

DATE MAILED: 05/14/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/657,981

Applicant(s)

KING, BARBARA A.

Examiner

Brian K. Green

Art Unit

3611

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- 1) ☐ Certified copies of the priority documents have been received.
 - 2) ☐ Certified copies of the priority documents have been received in Application No. ____.
 - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

Specification

The abstract of the disclosure is objected to because on line 5 legal phraseology "means" is used which is improper. Correction is required. See MPEP § 608.01(b).

Claim Objections

Claims 4-9, objected to because of the following informalities: In claims 4 and 7, line 10, "a jump ring, wherein the jump ring" should apparently be "wherein the jump ring" since the applicant already defines a jump ring on line 9. In claims 14 and 17, line 11, "a jump ring, wherein the jump ring" should apparently be "wherein the jump ring" since the applicant already defines a jump ring on line 10. Appropriate correction is required.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1,2,4,5,7,8,10-12,14,15,17,18, and 20 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-3 of U.S. Patent No. 6,615,517. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 1-3 of Patent No. 6,615,517 discloses a beverage

Art Unit: 3611

reservoir, at least one stem and a handle, a base, and a bauble comprising a glassware engaging member, a primary aperture, means for releasably securing the engaging member to the glassware including a secondary aperture and a prong, a primary identifier, a jump ring, and a supplemental identifier.

Claims 3,6,9,13,16, and 19 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-3 of U.S. Patent No. 6,615,517 in view of Skapyak et al. (U.S. Patent No. 6,293,034). Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 1-3 of Patent No. 6,615,517 disclose the applicant's basic inventive concept except for making the securement means in the form of first and second hooks. Skapyak et al. shows in figure 1B a securement means (32) that includes first and second hooks. In view of the teachings of Skapyak et al. it would have been obvious to one in the art to modify claims 1-3 of Patent No. 6,615,517 by making the securement means in the form of first and second hooks since this would create a more aesthetically pleasing securing means and would allow the securing means to be used in an easier and better manner.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Art Unit: 3611

Claims 1,3,4,6,7,9-11,13,14,16,17,19, and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Boykin (U.S. Patent No. 4,271,616).

Boykin shows in figures 1-4 a beverage bauble comprising a primary aperture (the large aperture within the flexible material 13), securing means (10c), a primary identifier (10d), a connector (10e), and a jump ring (one of the rings on 10a). In regard to claim 3, Boykin shows first and second hooks (10c,10c). In regard to claim 7, the supplemental identifier is considered to be a couple of the rings of the member (10a). In regard to claims 10 and 20, Boykin shows in figure 4 a bottle 11 in which the bottom of the bottle is considered to be the base, the portion with the lead line for numeral 11 is considered to be the reservoir, and the portion where the bauble (10) is attached is considered to be either a handle or stem as broadly defined. It is considered to be a handle since the bottle can be picked up by the upper portion of the bottle.

Claims 1,3,,11, and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Hutchens (U.S. Patent No. 5,581,921).

Hutchens shows in figures 10A and 10B a beverage bauble comprising a primary aperture (the large aperture formed by members (136,138)), securing means (136,138), a primary identifier (122), a connector (124). In regard to claim 3, Hutchens shows first and second hooks (128,130).

Claims 1-9 are rejected under 35 U.S.C. 102(b) as being anticipated by Bates (U.S. Patent No. 534,946).

Art Unit: 3611

Bates shows in figures 1-4 a beverage bauble comprising a primary aperture (the aperture shown in figures 2 and 3, i.e. the aperture formed when the ends of the chain are secured together), securing means (c,c), a primary identifier (the pocket-book), a connector (d), and a jump ring (the ring connecting d to the member c). In regard to claim 2, Bates shows the idea of making the securing means in the form of a prong (c) which engages an aperture (c). In regard to claim 3, Bates shows first and second hooks (c,c).

Claims 10 and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Australia 647,042.

Australia '042 shows in figures 1-4 a piece of beverage glassware comprising a beverage reservoir (1), a stem (2), a base (3), and a beverage bauble (4).

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1,3,4,6,7,9-11,13,14,16,17,19, and 20 are rejected under 35 U.S.C. 102(e) as being anticipated by Skapyak et al. (U.S. Patent No. 6,293,034).

Skapyak et al. shows in figures 1-3 a beverage bauble comprising a primary aperture (the large aperture formed by ring 30, see figure 1B), securing means (32), a primary identifier (34), a connector (the ring on the upper portion of identifier 34), and a jump ring (the ring which connects the connector on identifier 34 to the primary aperture, see figure 1B). In regard to claims 3,6,9,13,16, and 19, Skapyak et al. shows in figure 1B first and second hooks (the hooks

Art Unit: 3611

which form securement means 32). In regard to claim 7, Skapyak et al. shows in figure 1B a supplemental identifier (36). In regard to claims 10 and 20, Skapyak et al. shows in figure 3 that the bauble is secured around a stem of glassware that includes a reservoir, a stem, and a base.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2,5,8,12,15, and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Skapyak et al. (U.S. Patent No. 6,293,034) in view of Meyer (U.S. Design Patent No. 269,863).

Skapyak et al. discloses the applicant's basic inventive concept except for making the securement means in the form of a secondary aperture and a prong. Meyer shows in figure 1 a securement means in the form of a secondary aperture (the lower circle on the securement means in fig. 1) and a prong (the member on the securement means that projects through the secondary aperture). In view of the teachings of Meyer it would have been obvious to one in the art to modify Skapyak et al. by making the securement means in the form of a secondary aperture and a prong since this would allow the primary aperture to be closed in a more secure manner and would create a more aesthetically pleasing securing means.

Art Unit: 3611

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

David et al. teaches the use of a marker that is attached to a handle. Ignatowski teaches the use of an ornamental device that comprises a double ring.

If a copy of a provisional application listed on the bottom portion of the accompanying Notice of References Cited (PTO-892) form is not included with this Office action and the PTO-892 has been annotated to indicate that the copy was not readily available, it is because the copy could not be readily obtained when the Office action was mailed. Should applicant desire a copy of such a provisional application, applicant should promptly request the copy from the Office of Public Records (OPR) in accordance with 37 CFR 1.14(a)(1)(iv), paying the required fee under 37 CFR 1.19(b)(1). If a copy is ordered from OPR, the shortened statutory period for reply to this Office action will not be reset under MPEP § 710.06 unless applicant can demonstrate a substantial delay by the Office in fulfilling the order for the copy of the provisional application. Where the applicant has been notified on the PTO-892 that a copy of the provisional application is not readily available, the provision of MPEP § 707.05(a) that a copy of the cited reference will be automatically furnished without charge does not apply.

Art Unit: 3611

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian K. Green whose telephone number is (703) 308-1011. The examiner can normally be reached on M-F 7am-3:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lesley Morris can be reached on (703) 308-0629. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



BRIAN K. GREEN
PRIMARY EXAMINER

BKG

May 3, 2004